



**MINUTES  
FREMONT PLANNING COMMISSION  
REGULAR MEETING OF JANUARY 9, 2014**

**CALL TO ORDER:** Chairperson Reed called the meeting to order at 7:00 p.m.

**PRESENT:** Chairperson Reed, Commissioners Bonaccorsi, Chugh, Jones, Leung, Lorenz, Pentaleri

**ABSENT:** None

**STAFF PRESENT:** Kristie Wheeler, Planning Manager  
Prasanna Rasiah, Deputy City Attorney  
Jeff Schwob, Community Development Director  
Alice Malotte, Recording Clerk  
Chavez Company, Remote Stenocaptioning  
Napoleon Batalao, Video Technician

**APPROVAL OF MINUTES:** Special Meeting of August 29, 2013, approved as submitted.

**DISCLOSURES:** **Chairperson Reed** drove by the site of Item 2.

**ELECTION OF OFFICERS:** **Commissioner Bonaccorsi** suggested, and the Commissioners agreed, deferring the election until the two new Commissioners were seated.

**CONSENT CALENDAR**

THE CONSENT LIST CONSISTED OF ITEM NUMBER(S) 1 AND 2.

IT WAS MOVED (PENTALERI/CHUGH) AND UNANIMOUSLY CARRIED BY ALL PRESENT THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTIONS ON ITEM NUMBER(S) 1 AND 2.

- Item 1. **PATTERSON RANCH DEVELOPMENT AGREEMENT 2013 ANNUAL REVIEW – Northeast corner of Paseo Padre Parkway and Ardenwood Boulevard - (PLN2014-00130)** - To consider an Annual Review of Development Agreement PLN2005-00186 for the Patterson Ranch project allowing the development of 500 single-family dwellings on approximately 102 acres of vacant land in the North Fremont Community Plan Area. This annual review is not subject to the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15378.

**Commissioner Lorenz** asked if the “field testing of the proposed dynamic compaction for the onsite liquefiable soils” had been completed.

**Planning Manager Wheeler** replied, “Yes, it was.”

FOUND THAT THE ANNUAL REVIEW OF THE DEVELOPMENT AGREEMENT IS NOT SUBJECT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO CEQA GUIDELINES SECTION 15378 IN THAT THE ACTIVITY DOES NOT MEET THE CEQA DEFINITION OF A “PROJECT;”

AND

FOUND ON THE BASIS OF SUBSTANTIAL EVIDENCE THAT THE PROPERTY OWNER HAS COMPLIED IN GOOD FAITH WITH THE TERMS AND CONDITIONS OF THE DEVELOPMENT AGREEMENT FOR THE PERIOD UNDER REVIEW (NOVEMBER 2012 TO NOVEMBER 2013).

- Item 2. **ST. JOSEPH’S PRIORY- 43326 Mission Boulevard - (PLN2013-00166)** – To consider a Conditional Use Permit, Preliminary Grading Plan, and Tentative Parcel Map to allow demolition of an existing 52-unit priory and construction of a new 38-unit priory, community room, and wellness center located on the Dominican Sisters campus in the Mission San Jose Community Plan Area; and to consider a Draft Mitigated Negative declaration prepared pursuant to the requirements of the California Environmental Quality Act (CEQA).

**Commissioner Bonaccorsi** asked what the timetable was as to when it would be constructed.

**Planning Manager Wheeler** stated that the Sisters had already submitted their building permit plans and staff was checking them at this time.

**Vice Chairperson Pentaleri** suggested that it be explained to the public as to how an item added to the Consent Calendar would be handled.

**Planning Manager Wheeler** explained that if the Consent Calendar were approved by the Commissioners, both items would be automatically approved without any further consideration. Both could be appealed to the City Council within 10 calendar days. She also pointed out the Gold Sheet changes as noted below.

Staff requests that the following corrections be included in the Staff Report and Conditions of Approval:

Staff Report - Add Recommendation #7, as follows:

7. Approve the proposed removal and mitigation for 24 protected trees pursuant to the City’s Tree Preservation Ordinance, based upon findings and conditions in Enclosure Exhibit “E.”

Findings and Conditions of Approval - Add Tree Removal Finding as follows:

r. The proposed tree removal would be consistent with the City's Tree Preservation Ordinance because removal is necessary to enable reasonable and conforming use of the property and to achieve a superior project, and the trees cannot be preserved by a reasonably required project redesign, in that the grading, building and circulation improvements result in different planting areas. The removal of the trees would not adversely affect the appearance of the subject property because the trees that would be lost would be replaced with 105 trees (Oak, Pistache, Pine, Pear, Laurel, Crape Myrtle, Dogwood, Lemon, Birch, and Arbutus) as specified on the landscape plans.

ADOPTED THE DRAFT MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING PLAN AS SHOWN IN EXHIBIT "A" AND FIND THAT THESE ACTIONS REFLECT THE INDEPENDENT JUDGMENT OF THE CITY OF FREMONT;

AND

FOUND THE PROPOSED PRIORY REPLACEMENT PROJECT, INCLUDING THE HISTORICAL ARCHITECTURAL REVIEW BOARD RECOMMENDATION, CONDITIONAL USE PERMIT, PRELIMINARY GRADING PLAN, AND TENTATIVE PARCEL MAP IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE RESIDENTIAL LAND USE DESIGNATION AND RELEVANT POLICY SET FORTH IN THE GENERAL PLAN'S LAND USE ELEMENT AS ENUMERATED WITHIN THE STAFF REPORT;

AND

APPROVED THE CONDITIONAL USE PERMIT, AS SHOWN ON EXHIBIT "C," BASED UPON THE FINDINGS AND SUBJECT TO THE CONDITIONS IN EXHIBIT "B;"

AND

APPROVED THE PRELIMINARY GRADING PLAN, AS SHOWN ON EXHIBIT "D", BASED UPON THE FINDINGS AND SUBJECT TO THE CONDITIONS IN EXHIBIT "B;"

AND

APPROVED THE TENTATIVE PARCEL MAP, AS SHOWN ON EXHIBIT "E", BASED UPON THE FINDINGS AND SUBJECT TO THE CONDITIONS IN EXHIBIT "B."

The motion carried by the following vote:

AYES: 7 – Bonaccorsi, Chugh, Jones, Leung, Lorenz, Pentaleri, Reed  
NOES: 0  
ABSTAIN: 0  
ABSENT: 0  
RECUSE: 0

## PUBLIC/ORAL COMMUNICATIONS

None

## PUBLIC HEARING ITEMS

- Item 3. **PERMITTING PROCEDURES AND REQUIREMENTS AND CITYWIDE DESIGN GUIDELINES – Citywide - (PLN2014-00018)** - To consider a Zoning Text Amendment to update the City's permitting procedures and requirements, and adoption of Citywide Design Guidelines to replace current Site Plan and Architectural Approval Standards and Requirements. The proposed project is an implementation measure of the adopted General Plan for which a Final Environmental Impact Report (EIR) (SCH#2010082060) was previously certified and, therefore, no further environmental review is required.

**Planning Manager Wheeler** introduced **Community Development Director Schwob** who stated that there was one additional change in the Nonconforming Use section that previously required a Conditional Use Permit (CUP). It had been waived for Centerville when the Centerville Specific Plan went into effect. However, the Centerville Specific Plan procedure had been implemented citywide. So, it was proposed that the Zoning Administrator carry on that practice unless some controversy occurred when it would be referred to the Planning Commission. He asked for questions.

**Vice Chairperson Pentaleri** asked the following:

- Page 162 - Toe of the Hill – had a footnote reference number, but no reference was available  
*The superscript “1” meant that the term was defined in the Zoning Code, which occurred periodically throughout the Code for a number of terms defined by the Code. If it was in the City Code, it was defined by “1”; the “2” was defined by the Standard Industrial Classification System, mostly attributable to Uses; the “3” was for Special Provisions that applied in the Miscellaneous Use Section.*
- Where did it show as a cross-reference in this document?  
*It appeared in various places in the Code, but not necessarily in every amended section. The on-line version showed the cross-reference as a hyperlink.*
- Page 163, I-1 – “Exception that proposed additional development located on parcels with existing primary buildings and in compliance with regulations of a P-District in existence prior to enactment of the Hill Area Initiative of 2002 shall not be required to comply with the Hill Area Initiative of 2002.” What were the limits of development for such parcels? Are they given by the then prevailing development standards or prescriptions? Are those limits made forever unchangeable? Do we always have to refer back to whatever the limits were prior to the Hill Initiative?  
*This section was not proposed to be changed. When the Hill Area Initiative was codified into the Zoning Code it incorporated this provision. A good example was*

*the Avalon Development where two-thirds of the project was above the toe of the hill and one-third was below. Yet, the development was all governed by one set of regulations, a Planned District (PD). The rules of the Planned District must be followed; the existing zoning would prevail.*

- Page 164, A – Qualified Design Professional – Should there be criteria regarding what shall constitute qualification in this context?

*The current Planned District Ordinance talked about having an urban planner, an architect, an engineer, a landscape architect, which were all specified. The intent was that during the early steps, such as a preliminary plan, the full team did not necessarily need to be assembled.*

- Page 185, B – “A use of land that becomes nonconforming may be continued for a period of 20 years from the date the use becomes nonconforming. No nonconforming use of land shall be increased or extended to occupy a greater area of land than was occupied when it became nonconforming.” In a different context (a two-year horizon), specific steps described enforcement mechanisms and noticing, but nothing had been included in this context.

*The 20-year horizon was difficult to implement, because it meant that notice had to be given, then there would be a 20-year wait. The intent was to have the nonconforming use go away. The two-year provision would occur, for example, if a Use Permit was granted and it was utilized for a period of time that, essentially, expired the old Use Permit. Or, even if the building were not reused or the use was not continued, then the two-year horizon would take affect, If a tenant could not be found to continue that use, it would expire. The 20-year Use was making the assumption that the use was ongoing and would continue for that period of time.*

- He recalled that the two-year reference was specifically in connection with nonconforming, adult oriented businesses.

*Yes, there was a whole different set of parameters for that example. He knew of one in the City that was nonconforming and it had been extended several times. Each time, staff had considered where else it might be located and it was decided, over the years, that its current location was innocuous and had not caused any problems. The Downtown Plan actually had created some parameters that would allow it to go on upper floors and these extension provisions had remained the same as before with no changes.*

It was suggested that what happens during the 20-year example needed to be described in the ordinance similar to the provisions from non-conforming adult businesses.

- Page 197, 18.205.030 A4 – Toe of the Slope was used and should be defined if it was different from the Toe of the Hill definition.

*A definition would be added, if it was not already in there. The Toe of the Slope was at the base where the slope started.*

- Page 234, 18.240.020 – A typo – “. . . not require ~~abuilding~~ a building permit . . .”
- Page 264 – A typo – Two periods in paragraph at bottom of page.
- Page 277, – (HOD) appeared several times without the words, Historic Overlay Districts spelled out.
- Page 277, 070 – HARB was also in brackets without being spelled out.

**Commissioner Bonaccorsi** asked what the reference mean that was made to Crime Prevention Through Environmental Design (CPTED) standards, as called by the General Plan. What were the Crime Prevention Standards and how were they intended to prevent crime?

**Director Schwob** replied that the Crime Prevention Standards were meant to create a standard of improved safety. For example, windows and doors were not blocked with shrubbery. Sometimes thorny vegetation was used to prevent people from trespassing in certain areas. A series of ideas and concepts that were employed to make buildings more “eyes on, more visible, more well lighted” to allow residents or neighbors to see what might be going on. This was a national standard and the police department uses this standard when making suggestions to make an area safer. The goal was, rather than retrofit, these suggestions should be considered up front with new projects.

**Commissioner Lorenz** asked:

- Regarding page 186, 18.180.030 “Nonconforming Uses of Structures or Buildings,” subsection “e” “Except as provided in Section . . . where a structure building containing a nonconforming use is damaged or destroyed by any means and replacement in kind exceed 50 percent of the property’s fair market value, it shall not resume its nonconforming use but may be restored and used in conformity with the provisions . . .” How would this apply to the four-plex on the corner of Mattos and Fremont Boulevard? It was currently a nonconforming use. If more than 50 percent were damaged by a fire, for example, could it be rebuilt and continued to be used in a nonconforming manner?

**Director Schwob** stated that Subsection 2 applied: *“The Planning Commission may grant a Conditional Use Permit allowing the reconstruction of the structure or building damaged or destroyed, as provided above . . . and make findings that the particular location is necessary for that use,” because of the uniqueness of the site or that no other site was available for continued operation of that type of use.* Actually, it appears that Section 18.180.080 – Reconstruction of Multifamily Dwellings would apply.

What might that property owner have to go through?

*“The City shall allow the dwelling to be reconstructed, restored or rebuilt up to its pre-damaged size and number of units, unless the City makes findings contained in Government Code Section, subsection b, or the building is in an industrial district.” The Government Code Section said, “Notwithstanding Subdivision A, a local agency may prohibit the reconstruction, restoration or rebuilding of a multifamily dwelling that is involuntarily damaged or destroyed, if the agency determines the reconstruction, restoration or rebuilding will be detrimental, injurious to the health, safety or general welfare of persons residing, working in the neighborhood or will be detrimental. . . . The existing nonconforming use of the building structure will be appropriately moved to . . . Any reconstruction, restoration or rebuilding of a multifamily building shall conform to the standards in Subsection D.” Subsection D said that it would need to meet building codes, would need to meet more locally restrictive building*

*standards, health and safety codes, the State Historic Building Code could be used and it would need to meet local zoning ordinances, so long as the pre-damaged size of the number of units was maintained, the architectural regulations and standards, so long as the pre-damaged size and number of dwelling units was maintained and a building permit.*

- How unique was that one structure? Did the City have other structures like that?  
*Yes. Even in that general area there were several properties zoned for office use that contained single-family dwellings. Osgood Road had some old houses that would be a slightly different case, but not multifamily. Multifamily nonconforming units were, however pretty rare.*
- If four families were displaced by a fire, how easy would it be for the property owner to reconstruct the building and get those families back into their homes?  
*Like any remodeling work, smoke and carbon monoxide detectors would have to be installed and, as of July 1<sup>st</sup>, the Code would require that all of the water and plumbing fixtures to be low-flow.*
- His personal interest involved an historic home on Fremont Boulevard that was being used as a personal residence, but it was a nonconforming use. Being historic it could be rebuilt to its . . .  
*It may not be nonconforming for much longer, because the General Plan had adaptive reuse policies for eligible historic structures that would allow permits for reuse of these structures with the goal of preserving the structures and creating economic value.*

**Commissioner Leung asked:**

- What would the key benefits for the City and future applicants be after updating all of the design guidelines.  
*One large change that the General Plan brought was the Community Character Element and the design was at a heightened level of awareness. The goal was to achieve certain characteristics along certain streets, in particular, along Downtown, City Center and, ultimately, in Warm Springs. These citywide design guidelines would replace the standards that were somewhat archaic. They had been created the City's early years. For example, they talked about protecting rock outcroppings. How often has the Commission had to worry about a rock out cropping? Now infill projects were being designed for the best fit and the creation of the right atmosphere and sense of place and the creation of good design was important. The new design guidelines were more pictorial; if one could meet the rules, one could have approval; no hearing would be required in many instances, which was very helpful; and the projects that needed some discretion and latitude or flexibility would go through a public hearing. The old code required that a lot of findings be made for approval, whereas the new code had greatly simplified this.*
- Was there an advantage concerning city fees?  
*Much of the process had been streamlined thereby reducing staff time and Planning Commissions hearings. Staff could make a determination in a few instances; the City Engineer could issue the grading plans, such as a landslide*

*repair. Why should a homeowner come before the Commission to repair a landslide, if it was going to be put back the way it was?*

- The City Engineer would be involved with the permitting process. Will he bring projects to the Commission?

*Currently, the City Engineer was Norm Hughes. The ordinance would take it out of the Public Works Director's purview, which was the recommendation of the City's retired Public Works Director Jim Pierson. Being a licensed engineer was not a requirement for the Public Works Director position. The City Engineer must be licensed, so it made sense for him to approve certain projects. And, the City Engineer could certainly refer certain items to the Commission for further review, when needed.*

**IT WAS MOVED (CHUGH/LORENZ) AND CARRIED BY THE FOLLOWING VOTE (7-0-0-0) THE PLANNING COMMISSION – FOUND THE PROPOSED PROJECT IS AN IMPLEMENTATION MEASURE OF THE GENERAL PLAN FOR WHICH AN ENVIRONMENTAL IMPACT REPORT WAS PREPARED AND CERTIFIED. FIND NO FURTHER ENVIRONMENTAL REVIEW IS REQUIRED;**

**AND**

**FOUND THAT PROPOSED ZONING TEXT AMENDMENT IS IN GENERAL CONFORMANCE WITH THE GENERAL PLAN;**

**AND**

**FOUND THE PUBLIC NECESSITY, CONVENIENCE AND GENERAL WELFARE REQUIRE THE ADOPTION OF THESE PROPOSED MUNICIPAL CODE AMENDMENTS BECAUSE IT IMPLEMENTS THE GENERAL PLAN; UPDATES PERMIT PROCESSING PROCEDURES TO BE TO CONSISTENT WITH FEDERAL, STATE AND LOCAL LAWS; AND FURTHER STREAMLINES PERMITTING PROCEDURES;**

**AND**

**RECOMMENDED THAT THE CITY COUNCIL INTRODUCE AN ORDINANCE AMENDING THE FREMONT MUNICIPAL CODE AS DESCRIBED IN THE STAFF REPORT ATTACHMENT;**

**AND**

**RECOMMENDED THAT THE CITY COUNCIL ADOPT A RESOLUTION APPROVING CITYWIDE DESIGN GUIDELINES.**

**The motion carried by the following vote:**

**AYES: 7 – Bonaccorsi, Chugh, Jones, Leung, Lorenz, Pentaleri, Reed**

**NOES: 0**

**ABSTAIN: 0**

**ABSENT: 0**

**RECUSE: 0**

**DISCUSSION ITEMS: None**



## MISCELLANEOUS ITEMS

Information from Commission and Staff:

- Information from staff: Staff will report on matters of interest.

**Planning Manager Wheeler** noted that the Commissioners' packets included registration information for the League of California Cities Planning Commissioners Academy, which was meeting in March. She invited the new Commissioners to attend that workshop in South San Francisco. She asked if the City paid the fee for new Commissioners.

**Director Schwob** stated that the City had always paid the registration for either new Commissioners or those who had never attended before. However, the City had never paid for a hotel or travel, which would not be needed this year.

**Commissioner Leung** asked if she would need to go online to register.

**Director Schwob** suggested she contact Julie Vidad in the Planning Division, who would take care of registration for all interested parties.

**Commissioner Leung** wondered about attending the Planning Commission meeting on March 27<sup>th</sup>, the same date as the Academy. She asked if it was held during the day.

**Planning Manager Wheeler** stated that she expected that the Warm Springs Community Plan would be heard on that date and, yes, the Academy was held during the day. She also announced that she had hard copies of the Warm Springs Community Plan for the Commissioners. She would keep **Commissioner Lorenz's** and **Commissioner Chugh's** copies for the new Commissioners. However, the plan was available online. A community workshop would be held January 15, 2014, 6:30 p.m., at the Warm Springs Community Center. A study session for the Warm Springs Community Plan would be held on February 18<sup>th</sup>.

**Commissioner Chugh** stated that the ethics training was required and that the Academy was a good way to get it done.

**Director Schwob** added that the class was much more interesting than doing it online.

- Report on actions of City Council Regular Meeting

None

- Information from Commission: Commission members may report on matters of interest.

**Vice Chairperson Pentaleri** asked about the status of the head shop on Grimmer Boulevard. He had driven by the shop a few days ago and the door was wide open.

**Planning Manager Wheeler** stated that a revocation of the CUP for the Monsters of Rock had been brought before the Commission. The City signed an agreement with the business owner (and approved by the property owner) to close the shop by the end of the year and to surrender the Use Permit, which did happen. The reason staff gave them until the end of the year was if they had appealed the revocation, it could have taken just as long.

The next Planning Commission would be held on January 23<sup>rd</sup>. One new Planning Commissioner would be appointed next week.

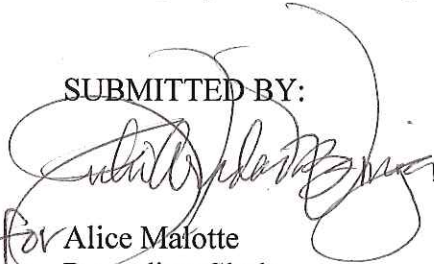
**Commissioner Lorenz** took the opportunity to thank **Director Schwob** for the help he had given over the nine years he had been a Commissioner. His knowledge had been invaluable and he had a deep and abiding respect for his contribution to the City.

**Director Schwob** replied that he always lamented losing Commissioners after the service had been given over the years.


**Commissioner Bonaccorsi** suggested closing the meeting in the memory of Guy Emanuel, a former school board trustee in Fremont, and who had done wonderful things in Union City as a New Haven Unified Superintendent. He believed in educating the whole student. His great line was that he would never give up on a student, even if the student had given up on himself.

Meeting adjourned at 7:40 p.m.

SUBMITTED BY:

  
for Alice Malotte  
Recording Clerk

APPROVED BY:

  
Kristie Wheeler, Secretary  
Planning Commission